

Updates: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Third Edition)

Part A—Commentary on Misdemeanor Arraignments

3.5 Arraignment on Arrest by Warrant

Effective January 9, 2007, 2006 PA 655 amended MCL 767.37a to eliminate a defendant's right to demand that he or she be physically present before the court for arraignment. MCL 767.37a deals with video arraignments and addresses issues similar to those in MCR 6.006, the court rule permitting interactive video arraignments. MCL 767.37a authorizes a judge or magistrate to set bail when conducting a video arraignment; the statute makes no distinction between arrests made with or without a warrant. In contrast, MCR 6.006(A) does not address bail, and the court rule specifically applies to arraignments on a warrant, complaint, or information. Insert the following text immediately before subsection (A) on page 10:

Judges and district court magistrates are authorized by statute to conduct arraignments and set bail using interactive video technology. MCL 767.37a states:

“(1) A judge or district court magistrate may conduct initial criminal arraignments and set bail by 2-way interactive video technology communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained. A judge or district court magistrate may conduct initial criminal arraignments and set bail on weekends, holidays, or at any time as determined by the court.

* * *

“(5) This act does not prohibit the use of 2-way interactive video technology for arraignments on the information, criminal pretrial hearings, criminal pleas, sentencing hearings for misdemeanor violations cognizable in the district court, show cause hearings, or

other criminal proceedings, to the extent the Michigan supreme court has authorized that use.”

Part A—Commentary on Misdemeanor Arraignments

3.6 Arraignment on Arrest Without a Warrant

Effective January 9, 2007, 2006 PA 655 amended MCL 767.37a to eliminate a defendant's right to demand that he or she be physically present before the court for arraignment. MCL 767.37a deals with video arraignments and addresses issues similar to those in MCR 6.006, the court rule permitting interactive video arraignments. MCL 767.37a authorizes a judge or magistrate to set bail when conducting a video arraignment; the statute makes no distinction between arrests made with or without a warrant. In contrast, MCR 6.006(A) does not address bail, and the court rule specifically applies to arraignments on a warrant, complaint, or information. Insert the following text before the paragraph beginning with “**Interim bail**” near the bottom of page 13:

Judges and district court magistrates are authorized by statute to conduct arraignments and set bail using interactive video technology. MCL 767.37a states:

“(1) A judge or district court magistrate may conduct initial criminal arraignments and set bail by 2-way interactive video technology communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained. A judge or district court magistrate may conduct initial criminal arraignments and set bail on weekends, holidays, or at any time as determined by the court.

* * *

“(5) This act does not prohibit the use of 2-way interactive video technology for arraignments on the information, criminal pretrial hearings, criminal pleas, sentencing hearings for misdemeanor violations cognizable in the district court, show cause hearings, or other criminal proceedings, to the extent the Michigan supreme court has authorized that use.”

Part A—Commentary on Misdemeanor Arraignments

3.21 A Crime Victim's Rights Following an Arraignment

Effective January 1, 2007, 2006 PA 461 deleted an offense from the list of “serious misdemeanors” in MCL 780.811(1)(a). Delete the second bullet (enticing a minor for immoral purposes, MCL 750.145a) near the top of page 38.

Effective January 1, 2007, 2006 PA 461 amended the Crime Victim's Rights Act with regard to notice requirements in cases involving deferred judgments and delayed sentences. Insert the following text before the paragraph beginning with “**Prosecutor's obligation to notify the crime victim**” on page 39:

Notice requirements in cases involving deferred judgments or delayed sentences. In all cases, the department of corrections, the department of human services, a county sheriff, or a prosecuting attorney must provide notice to a victim if the case against the defendant is resolved by assignment of the defendant to trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal. In performing this duty, the court, department of corrections, department of human services, county sheriff, or prosecuting attorney may furnish information or records to the victim that would otherwise be closed to public inspection, including information or records related to a defendant's youthful trainee status. MCL 780.752a; MCL 780.781a; MCL 780.811b.

Effective January 3, 2007, 2006 PA 620 amended MCL 600.1062 to permit drug treatment courts to accept participants from outside jurisdictions. Insert the following **Note** after the quoted paragraph at the bottom of page 39:

Note: Subject to the agreement of the defendant, the defendant's attorney, the prosecutor, the judge of the transferring court, the judge of the receiving court, and the prosecutor of the receiving drug treatment court's funding unit, a drug treatment court may accept participants from any other jurisdiction based on the participant's residence or the unavailability of a drug treatment court in the jurisdiction where the participant is charged. MCL 600.1062(4).

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Part A—Commentary on Misdemeanor Arraignments

3.1 Applicable Court Rules

Effective May 1, 2007, MCR 6.001 was amended to expand the list of court rule provisions applicable to matters of procedure in criminal cases subject to district court jurisdiction. Insert the following text after the first bullet on page 3:

- MCR 6.005(B) and (C) (indigent defendants)

The addition of MCR 6.005(B) and (C) to the list of rules applicable to criminal procedure in cases cognizable by the district court necessitates revision of the content in the paragraph beginning at the bottom of page 3. Therefore, replace the paragraph beginning at the bottom of page 3 and continuing at the top of page 4 with the following text:

Several court rules in Chapter 6 (the chapter containing court rules governing criminal procedure, in general) are not expressly noted in MCR 6.001(B) as applicable to proceedings that involve misdemeanor offenses cognizable in district court. However, rules not specifically mentioned in MCR 6.001(B) may be instructive in situations when no court rule specific to district court procedure is supplied elsewhere. For example, MCR 6.104(B) discusses the place of arraignment and, although the rule is not specifically cited by MCR 6.001(B), it may be helpful in handling misdemeanor cases cognizable in district court. In addition to those “Chapter 6” rules not expressly noted in MCR 6.001(B), the rules of civil procedure apply to criminal cases unless a statute or court rule provides a similar or different procedure applicable to the circumstances. MCR 6.001(D).

Part A—Commentary on Misdemeanor Arraignments

3.5 Arraignment on Arrest by Warrant

A. When Arrest Is Made in Same County Where Charged Offense Occurred

Effective June 19, 2007, 2007 PA 20 changed the explanation in MCL 761.1(u) regarding what qualifies as an appearance before a district court judge or magistrate. On page 10, replace sub-subparagraph (ii) in this subsection with the following text:

(ii) presence before a judge or district court magistrate by using two-way interactive video technology.

Part A—Commentary on Misdemeanor Arraignments

3.10 Determining Whether a Defendant Is Indigent

Delete the first full paragraph near the top of page 18. The addition of MCR 6.005(B) and (C) to the list of rules applicable to criminal procedure in cases cognizable by the district court negates the information contained in that paragraph.

Part B—Commentary on Pleas

3.38 Withdrawing or Challenging a Plea

Effective May 1, 2007, MCR 7.103 was amended to reflect the provision added to MCR 6.625 regarding time limits within which a court must appoint appellate counsel for indigent defendants. On page 68, replace the last sentence of the first paragraph in this section with the following text:

*MCR
6.625(B),
effective May
1, 2007.

If the motion to withdraw is made after the sentence has been imposed, it must be made within the time limits governing applications for leave to appeal outlined in MCR 7.103(B)(6) (within 21 days from entry of judgment unless otherwise provided by statute or court rule,* or for delayed applications for leave, no more than six months after judgment is entered and the application must include an affidavit explaining the delay). MCR 6.610(E)(8)(a); MCR 7.103(B)(1).

Part B—Commentary on Pleas

3.40 Appealing a Plea-Based Conviction

Effective May 1, 2007, MCR 6.610(F) and MCR 6.625 were amended to require a court to advise an indigent defendant sentenced to a term of incarceration of his or her right to a court-appointed attorney if the defendant wishes to appeal his or her conviction. Insert the following text before the October 2006 update to page 75:

A district court is required to advise a defendant of his or her right to a court-appointed attorney if the court sentences the defendant to a term of incarceration and the defendant wishes to appeal the conviction. MCR 6.610(F)(3) states:

“(3) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

“(a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

“(b) the request for a lawyer must be made within 14 days after sentencing.”

MCR 6.625 governs the appointment of counsel when requested by an indigent defendant sentenced to a term of incarceration:

“(B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the court must enter an order appointing a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. Unless there is a postjudgment motion pending, the court must rule on a defendant’s request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court’s disposition of the pending motion and within 14 days after that disposition. If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.101(B)(1) and MCR 7.103(B)(1) shall commence on the day of the appointment.”